

AMENDED IN SENATE AUGUST 16, 1999

AMENDED IN SENATE JULY 12, 1999

AMENDED IN ASSEMBLY MAY 17, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 1316

Introduced by Assembly Member Correa

February 26, 1999

~~An act to add and repeal Chapter 6.6 (commencing with Section 3079) to Part 4 of Division 3 of the Civil Code, relating to commercial leases. An act to amend Section 405.4 of the Code of Civil Procedure, relating to nonresidential leases.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1316, as amended, Correa. Commercial leaseholds.

Existing law authorizes a party to a civil action who asserts a real property claim to record in the office of the recorder of each county in which all or part of the real property is situated a notice of pendency of action in which that real property claim is alleged. Existing law defines a real property claim to mean a cause of action which would, if meritorious, affect (1) title to, or the right to possession of, specific real property or (2) the use of an easement identified in the pleading of the cause of action, except as specified.

This bill would define a real property claim for purposes of the recording provisions described above to include a cause of action for contract damages which would, if the cause of action is meritorious, require an owner of real property to pay

a commission earned by a real estate licensee for securing or providing a tenant who acquires a nonresidential leasehold interest in the subject real property. By creating additional duties upon local officials, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

~~Existing law provides for the creation of leasehold interests.~~

~~This bill would, until January 1, 2005, provide that a real estate licensee who is owed pursuant to a written contract a commission pursuant to services performed in connection with securing a tenant for a commercial lease or the property owner alleged to be obligated by the contract may demand the submission of the dispute to arbitration, as specified. The bill would provide that its requirements only apply to claims for unpaid commissions that meet specified criteria. The bill would authorize the Judicial Council to adopt rules to implement these provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~no~~ yes.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. Chapter 6.6 (commencing with Section~~
- 2 *SECTION 1. Section 405.4 of the Code of Civil*
- 3 *Procedure is amended to read:*
- 4 405.4. "Real property claim" means the cause or
- 5 causes of action in a pleading which would, if meritorious,
- 6 affect (a) title to, or the right to possession of, specific real
- 7 property or (b) the use of an easement identified in the

pleading, other than an easement obtained pursuant to statute by any regulated public utility.

“Real property claim” also means, for purposes of recording a lis pendens, a cause of action for contract damages which would, if the cause of action is meritorious, require an owner of real property to pay a commission earned by a real estate licensee for securing or providing a tenant who acquires a nonresidential leasehold interest in the subject real property.

SEC. 2. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

~~3079) is added to Part 4 of Division 3 of the Civil Code, to read:~~

~~CHAPTER 6.6. COMMERCIAL LEASES~~

~~3079. As used in this chapter, the following definitions shall apply:~~

~~(1) “Commission” means compensation for acts that require a real estate license.~~

~~(2) “Commercial lease” means a leasehold interest in real estate improved for nonresidential purposes. “Commercial lease” does not include a contract binding a natural person who seeks to obtain, goods or services, whether directly or through employment benefits, that are intended primarily for personal, family, or household purposes.~~

~~3079.1. A real estate licensee who is owed pursuant to a written contract a commission payable pursuant to services performed in connection with securing a tenant for a commercial lease, or the property owner alleged to be obligated by the contract, may demand the submission~~

1 of any dispute over the commission with the person who
2 received the services to arbitration within 30 days of the
3 date of the demand for the commission only if the
4 demand is made no later than 180 days from the date that
5 the commission is due. Any claim made pursuant to the
6 demand may only be made against the owner of the real
7 estate.

8 3079.2. (a) Arbitration under this chapter shall be
9 conducted by rules consistent with rules of the American
10 Arbitration Association, or other rules mutually agreed
11 upon by the parties. Except as otherwise provided by this
12 chapter, arbitration shall be conducted in accordance
13 with Chapters 1 to 4, inclusive, of Title 9 (commencing
14 with Section 1280) of Part 3 of the Code of Civil
15 Procedure.

16 (b) As part of his or her demand for arbitration of the
17 commission dispute the real estate licensee demanding
18 the arbitration shall nominate one or more arbitrators. If
19 the nominated arbitrators are not acceptable to the
20 responding party, the licensee and the responding party
21 may mutually agree upon a different arbitrator or select
22 an arbitrator under the procedure set out in the rules of
23 the American Arbitration Association.

24 (c) Regardless of the method of selection, the
25 arbitrator shall be qualified in the law of leases and real
26 estate, as determined by an agreement between the
27 parties or, in the absence of this agreement, pursuant to
28 the rules for the selection of arbitrators adopted by the
29 American Arbitration Association. This section shall not
30 be construed to require the use of panel members of the
31 American Arbitration Association.

32 3079.3. This chapter shall apply only to claims for
33 unpaid commission that exceed the jurisdiction of the
34 small claims court and do not exceed the sum of fifty
35 thousand dollars (\$50,000). The limitation of amount in
36 this section applies to the amount of commission payable
37 and not received, and not to the total value of a contract.

38 3079.4. A decision in an arbitration proceeding under
39 this chapter may include whether any compensation is
40 owed, and the amount, if any, that is owed. A decision that

1 ~~requires the payment of money may be enforced as~~
2 ~~provided by Chapter 4 (commencing with Section 1285)~~
3 ~~of Title 9 of Part 3 of the Code of Civil Procedure.~~

4 ~~3079.5. In addition to any remedies and rights~~
5 ~~available under Sections 1286.2 and 1286.4, either party to~~
6 ~~an arbitration pursuant to this chapter may petition a~~
7 ~~superior court to vacate the award. The court shall vacate~~
8 ~~the arbitration award if it determines that the award is the~~
9 ~~result of substantial legal error by the arbitrator that has~~
10 ~~resulted in a miscarriage of justice.~~

11 ~~The award shall not be vacated unless, after weighing~~
12 ~~the evidence, the court is convinced from the entire~~
13 ~~record, including reasonable inferences therefrom, that~~
14 ~~the arbiter clearly should have reached a different~~
15 ~~verdict or decision.~~

16 ~~The Judicial Council may adopt any rules necessary or~~
17 ~~appropriate to implement this title.~~

18 ~~3079.6. Every written contract for the payment of a~~
19 ~~commission upon securing a tenant for a commercial~~
20 ~~lease shall include a boldface warning that a dispute over~~
21 ~~the commission may require arbitration if the amount in~~
22 ~~dispute meets the requirements of Section 3079.3.~~

23 ~~3079.7. This chapter shall remain in effect only until~~
24 ~~January 1, 2005, and as of that date is repealed unless a~~
25 ~~later enacted statute that is enacted before January 1,~~
26 ~~2005, deletes or extends that date.~~